

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

DELWYN V. WELLS,

Plaintiff/Appellant,

v.

JOHN CARGILE, et al.,

Defendants/Appellees.

03:04-CV-00143-LRH (RAM)  
C/A No.: 06-15091

ORDER

The Ninth Circuit has referred this matter to this court for the limited purpose of determining whether Delwyn V. Wells's appeal has been taken in good faith or is frivolous.

Wells brought a civil rights action alleging the use of excessive force in conducting his arrest and a failure by the City to properly investigate the incident. The matter came before the Court on defendants' Motion for Summary Judgment. The Court concluded that there was no issue of material fact preventing the Court from entering judgment in favor of the defendants.

28 U.S.C. § 1915(a)(3) provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." The good faith requirement is satisfied if the petitioner seeks review of any issue that is "not frivolous." *Coppedge v. United States*, 369 U.S. 438, 445, 82 S.Ct. 917, 8 L.Ed.2d 2 (1962). "Unless the issues raised are so frivolous that the appeal would be dismissed in the case of a nonindigent litigant . . . the request of an indigent for leave to appeal in forma pauperis must be allowed." *Ellis v. United States*, 356 U.S.

1 674, 675, 78 S.Ct. 974, 975, 2 L.Ed.2d 1060 (1958).

2 This court carefully considered the claims brought by Wells, and applying the law, without  
3 consideration of his *in forma pauperis* status, and concluded his claims were unsupported by either  
4 the law or the facts. Plaintiff failed to muster the necessary evidence and his claims were not  
5 supportable. The appeal is not taken in good faith.

6 IT IS SO ORDERED.

7 DATED this 13<sup>th</sup> day of February, 2006.

A handwritten signature in blue ink, appearing to read "L. Hicks", is positioned above the printed name of the judge.

10 LARRY R. HICKS  
11 UNITED STATES DISTRICT JUDGE  
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